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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,483	04/22/2005	John A. Organiscak	6395-67118-05	4284
24197 7590 09/21/2009 KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET SUITE 1600 PORTLAND, OR 97204				
EXAMINER ALEXANDER, LYLE				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
09/21/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/532,483

**Applicant(s)**

ORGANISCAK ET AL.

**Examiner**

LYLE ALEXANDER

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-8 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The 6/5/09 amendments have overcome the 4/16/09 35 USC 112 first paragraph rejections. However, upon further consideration, new 35 USC 112 second paragraph issues have been raised. It is not clear how claims 7-8 and 17 calculate the determination of the tracer concentration or the time to achieve the required concentration.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 4-6,9-10,12-13, 15-16,18-20 and 23-25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by WO 02/063294.

WO 02/063294 teaches an air monitoring system associated with a ventilation system comprising a filtration system and a detector. Figure 1 teaches acquiring a air sample(108) and passing the air through a manifold and a series of detectors(128,130,132). The sample passes through filter(341) and through subsequent sensors(134). Page 13 lines 28 through page 14 teach placing filter(341) in front of gas sensor(134). Page 14 lines 4-13 teach the gas sensors to detect carbon dioxide, nitrogen, VOC's and oxygen from the air exiting the ventilation system which

have been read on the claimed "tracer". The claimed introducing surrounding air into a ventilation system, filtering the gas in the ventilation system(e.g. removing the claimed tracer) and analyzing the filtered sample for the filtered substances (e.g. the claimed tracer) have been read on the taught sequence of flow and analysis above.

Claims 1, 4, 12,15,18 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Roberts (USP 2,996,661).

Roberts teach a system for detecting leaks in ventilation system using a tracer from the halogen family (see column 3 line 71) which has been read on the claimed tracer that is naturally present in the air. Column 2 lines 55- teach ambient air is drawn through filter(1) for the removal of the background tracer gas and other contaminants. The leak detection gas sample is acquired though the probe(11) and orifice(8) and analyzed by detector(4) to determine if a leak is present. The taught filter(1) to remove the tracer gas has been read on the claimed introducing surrounding air into a ventilation system and filtering the gas to remove a tracer. The taught subsequent analysis by detector(4) has been read on the claimed analysis the filtered sample gas for the tracer.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 11, 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts (USP 2,996,661).

See Roberts *supra*.

Roberts is silent to which halogen is used as the tracer gas and to the use of an "electrostatic filter".

It is within the skill of the art as "Obvious to try" when choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success. The halogen family is finite and all have the similar inert properties. It would have been within the skill of the art to modify Roberts and select argon from the halogen family as obvious to try.

Additionally, it is well settled that "simple substitution of one known element for another to obtain predictable results" is within the skill of the art. Electrostatic filters are well known in the art and are advantageous because they do not trap the filtrate and do not need replacement as often as the conventional type of filter. It would have been within the skill of the art to further modify Roberts and use an electrostatic filter for the well known and expected results of filtration and to gain the advantages of longer run times before replacement is needed.

Claims 3,14,21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 02/063294 in view of Leiman et al. (USP 4,879,999).

See WO 02/063294 *supra*.

WO 02/063294 is silent to the claimed filter housing containing soda lime or the claimed "electrostatic filter".

Leiman et al. teach a colorimetric device for the detection of carbon dioxide. In column 5 Leiman et al. teach their indicator comprises soda lime and a pH indicator and

is advantageous because it provides quick visual determination of physiologically significant levels of carbon dioxide (e.g. as evidenced by its use with an endotracheal device).

It would have been within the skill of the art to modify either WO 02/063294 in view of Leiman et al. and use a soda lime indicator to gain the above advantages of quick visual determination.

Additionally, it is well settled that "simple substitution of one known element for another to obtain predictable results" is within the skill of the art. Electrostatic filters are well known in the art and are advantageous because they do not trap the filtrate and do not need replacement as often as the conventional type of filter. It would have been within the skill of the art to further modify WO 02/063294 and use an electrostatic filter for the well known and expected results of filtration and to gain the advantages of longer run times before replacement is needed.

### ***Response to Arguments***

3. Applicant's arguments filed 6/5/09 have been fully considered but they are not persuasive.

In light of the 6/5/09 the 35 USC 112 first paragraph rejections have been vacated. The Office now understands the invention as a method and apparatus for the detection of leaks in a ventilation system that supplies air to an enclosure. The Office maintains the art originally applied in the 10/16/08 Office action has been re-applied in a similar manner and properly reads on the pending claims as described above. These references are especially pertinent in light of the 6/5/09 amendments that have

broadened the scope of the pending claims 1-8 and 18-26 that are now only directed to detection of a tracer rather than leak detection. Finally, WO 02/063294 was originally cited by Applicant in the 10/16/08 IDS. However, a copy of this reference is no longer in the file and the Office is re-citing WO 02/063294 to place a copy of the reference in the file.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Veelenturf et al. (USP 6,241,950) teach in column 1 lines 33-39 that positive pressure inside of a building prevents ambient air from entering the building through leaks in the building.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYLE ALEXANDER whose telephone number is (571)272-1254. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lyle A Alexander/  
Primary Examiner, Art Unit 1797